

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

LUIS AVILA,

Defendant.

2:12-CR-82 JCM (VCF)

ORDER

Presently before the court is defendant Luis Avila's motion for district judge to reconsider Magistrate Judge Cam Ferenbach's detention order. (Doc. #110). The government has not yet filed a response.

Citing *United States v. Koenig*, 912 F.2d 1190, 1192 (9th Cir. 1990), Mr. Avila requests that this court engage in de novo review of the magistrate judge's findings of fact and conclusions of law. This court agrees that a de novo standard of review is the appropriate standard to employ.

The Ninth Circuit's decision in *Koenig*, however, did not only clarify the proper standard of review pursuant to 18 U.S.C. 3145(b). The court also took the occasion to explain what de novo review consisted of in the context of amending a magistrate judge's detention order. The court explained:

It may be too late to restore the original precision to the term "de novo," but we can at least state what we conceive it to mean in the context of a district court's review of a magistrate's detention order. Clearly, the district court is not required to start over in every case, and proceed as if the magistrate's decision and findings did not exist. The district court erred, however, in ruling that it could review the magistrate's findings under a "clearly

Id. at 1192-93.

Mr. Avila's motion states that this father is willing to post a \$100,000 bond to ensure Mr. Avila's presence, that his mother is willing to serve as a third party custodian, and that Mr. Avila is willing to pay the full costs of GPS-monitoring during the pendency of his pretrial release. While the magistrate judge based his ruling, primarily, on the nature and extent of the instant charges as well as Mr. Avila's well-documented and serious criminal history, it is not clear whether this new information may have impacted the magistrate's decision. Accordingly, the court finds it appropriate to refer the matter to the magistrate to reopen the detention proceedings in light of the new evidence.

IT IS SO ORDERED.

DATED May 17, 2012.

James C. Mahan
UNITED STATES DISTRICT JUDGE